Secta. II-27—100,006—21-5-52.

Fisika Development (1948) Department.

Ms · SERIES.

G.O. No. 909

Dated 27-12-1948

[Despatch Abstract.]

The Madras Temple Entry Authorisation Actm 1947 - Exemption from the operation of the Act - Temples belonging to a section of the Hindu community - Certain difficulties-clarification - Papers - Recorded.

Copy of letter No. 74137/48-1,Adm. dated 16-7-1948 from the President, Hindu Religious Endowments Board, Madras to the Secretary to the Government of Madras, Firka Development Department, Madras.

Sub: The Madras Temple Entry Act - Exemption from the operation of the Act - Temples belonging to a section of the Hindu Community - Decision regarding - Remarks.

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In Section 9 (12) of the Madras Hindu Religious Endowments Act, 1926 "Temples" is defined as " a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of or used as of right by the Hindu Community, or any Section thereof as a place of religious worship". Section 2 (2) of the Madras Temple Entry Act, 1947 defines "temple" as a place by whatever name known, which is dedicated to or for the benefit of, or used as of right by the Hindu Community in general, as a place of public religious worship and includes subsidiary shrines and mandapams attached to such places.

If there is any dispute as to whether an institution is a temple as defined in the Madras H.R.E. Act, 1926, the Board has to give a decision under Section 84 (1)(a) of the said Act and no Court in the exercise of its original jurisdiction shall take cognizance of any such dispute. Hence under the Madras H.R.E. Act, 1926 the Board is the initial authority to decide whether an institution is a temple "dedicated to, or for the benefit of, or used as of right by, the Hindu Community, OR ANY SECTION THEREOF, as a place of religious worship. The remarks offered by the Board on the petitions under the Madras Temple Entry Authorisation Act, 1947 forwarded to it for remarks by the Government are not and have not the force of decisions of the Board under Sec. 84(1) of Madras Act II of 1927.

In G.O.No.376, dated 23-6-1948 the Government have declared the temples of Sri Krishnamurthi and Ayyappan at Karumanasseri village, Palghat Taluk, Malabar Dist. as temples outside the cope of the Madras Temple Entry Authorisation Act, 1947 on the ground that the temples belong to the Brahmin house holders of the said village and that the Hindu community in general is not entitled as of right to enter the said two temples. This declaration of the Government tantaments to a decision under Sec. 84 (1) of the Madras Hindu Religious Endowments Act, 1926 and would embarass the Board if it were removed by any person having interest to give a decision under Sec. 84 (1)(a) of Madras Act II of 1927. Trustees as well as members of the worshipping public, fond of litigation and with clever lawyers to assist them, will not be slow in taking advantage of the complications arising out of the concurrent jurisdiction vested in the Board and the Government in respect of the same matter. The funds of temples will be wasted in protracted and costly litigation and the purpose or which the Madras Temple Entry Authorisation Act was passed might become frustrated. It is this discontenting aspect that has prompted the Board in addressing this communication to the Government for their kind consideration.

I have therefore the honour to submit for the kind consideration of the Government whether it may not be advisable when a dispute is raised before them that a temple is not one as defined in the Madras Temple Entry Act, 1947 on the ground THAT IT BELONGS TO A SECTION OF THE PUBLIC, that the party raising the dispute is in the first instance directed to obtain a decision from the Board under Section 84(1) of the Madras Hindu Religious Endowments Act, 1926. After the Board has given its decision under Section 84 of the Act the

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the Government may pass the necessary orders under Section 6 of the Temple Entry Authorisation Act, 1947.

Sd. x x
President.

GOVERNMENT OF MADRAS
Firka Development Department.---(V).

Memo No.3312-V-2/48,Firka Development,dt. 15-12-1948.

Sub: Madras Temple Entry Authorisation Act - Exemption from the operation of the Act - Temples belonging to a section of the Hindu Community - Certain difficulties.

Ref; From the President, Hindu Religious Endowments Board, letter No.& 74137/48-1, dated 15-7-1948.

The President, Hindu Relgious Endowments Board is informed that it has been proposed to amend the definition of the word 'temple' in Section 2 (2) of the Madras Temple Entry Authorisation Act with a view to bring it on line with the definition of 'temple' in Section 9 (12) of the Hindu Religious Endowments Board Act. When the amendment takes effect, there will be hardly any need for Government's decision under Section 6 of the Madras Temple Entry Authorisation Act to differ from the decision of the Board under Section 84 (1) of the Hindu Religious Endowments Act, and no difficulties pointed out by the President will not therefore arise then.

Sd. x x /
Secy.to Government.

To

The President,
Hindu Religious Endowments Board.

P.t.o.

Firka Development Dept.(IV)

NOTE FILE.

From the President, Hindu Religious Endowments Board,
C.No.3312/48. letter No.84137/48-1,dated 16-7-1948.

Madras Temple Entry Authorisation Act, 1947 - Exemption from the operation of the Act -.Temples belonging to a section of the Hindu community.

For the reasons explained in his letter on pp.1-3 c.f. the President, H.R.E. Board observes that the decision given by the Government under section 6 of the Madras Temple Entry Authorisation Act, 1947, declaring that a temple is not one as defined in the M.T.E.A. Act, tantamounts to a decision by the Board under section 84 (1) of the H.R.E. Act,1927, and that as the decision under section 84 (1) of the Act has to be given by the Board, any decision given by the Government under section 6 of the M.T.E.A. Act would embarass the H.R.E. Board if it were moved by any person having interest in the temple to give a decision under section 84 (1) of the H.R.E. Act. He also apprehends that the trustees of the temples and interested members of worshipping public taking advantage of the complications arising out of the concurrent jurisdiction vested in the Board and the Government in the same matter, will enter into protracted litigation wasting unnecessarily temple funds. He therefore, suggests to Government to consider the advisability of directing the party raising the dispute that a temple is not one as defined in the M.T.E.A. Act, to obtain a decision from the H.R.E. Board in the first instance, under section 84 (1) of the H.R.E. Act.

2. The view of the President referred to at 'A' above does not seem to be maintainable for, the definition of temple in the M.T.E.A. Act is restricted, in that it does not include sectional temples while the H.R.E. Act includes within its scope sectional temples as well. All religious institutions declared as Temples under the M.T.E.A. Act,1947 should necessarily be temples as defined in the H.R.E. Act. But a religious institution which has been declared as Temple under section 84 (1) of the H.R.E. Act need not necessarily be a temple as defined in the M.T.E.A. Act. Also religious institutions which have been declared as not falling within the definition of 'temple' under the M.T.E.A. Act may or may not be declared as 'temple' under section 84(1) of the H.R.E.Act.

3. The President, H.R.E.Board is invariably consulted in all cases where the Govt. are required to give a decision under the M.T.E.A. Act as to whether a particular 'temple' falls within the scope of the Act or not. The President offers his remarks in each case and they are taken in account in giving a decision on the point at issue. Section 84(1) contemplates that if any dispute arises whether the institution is a 'temple' or not as defined in the H.R.E. Act, such dispute should be decided by the Board. The remarks of the President obtained on the applications received by the Govt. cannot be taken or construed as the views of the Board under Section 84(1) of the H.R.E. Act.

There need not therefore be any embarassment to the Board over the decisions of Govt. in ease they do not fall in line with its decisions.

4. It may be pointed out in this connection, that there is a proposal to amend the definition of the word 'temple' in Section 2 (2) of the M.T.E.A. Act with a view to bring it in line with the definition of 'temple' in Section 9(12) of the H.R.E. Act. When this amendment takes effect, there will

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will be hardly any need for Govt's decision under Section 6 of the M.T.E.A. Act to differ from the decision of the Board under Section 84 (1) of the H.R.E. Act. The difficulties pointed out by the President will not therefore arise then. The President may be informed accordingly.

Legal may see for advice.

Sd. x x/2-8-48. Sd. x x
6-8-48.

FD.U.O.NO.3312/48-1,dt. 6-8-1948.

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Legal Department.

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The difficulty pointed out by the President, H.R.E. Board, viz. that there is the possibility of Government declaring an institution to be a temple within the meaning of Section 2 (2) of the Madras Temple Entry Authorization Act, 1947 and of the H.R.E. Board declaring the same institution as not being a temple under section 9 (12) of the Madras Hindu Religious Endowments Act, 1926, and VICE VERSA, seems to be a real one and more or less inevitable as the authorities empowered to decide the matters arising under the two Acts which are practically the same, are different. The difficulty can be satisfactorily met only by vesting the jurisdiction to decide the matter under the two Acts in the same authority and by amending the two Acts so as to make the decision of that authority under one Act as having the effect of a decision of that authority under the other Act also. Consequential amendments should also be made. For example, under section 6 of the Madras Temple Entry Authorization Act, 1947, the Civil Court will be the authority competent to entertain an application against the decision of the Government under that section. But under section 84(2) of the Madras H.R.E.Act, an application lies to the District Court only and an appeal lies to the High Court against the District Judge's order.

The suggestion of the President will not satisfactorily meet the difficulty pointed out by him, as even if it is given effect to, it will still be open to the two authorities under the two Acts, viz. Government and the Board, to give conflicting decisions on the same matter.

Sd. x x/20-8-48. Sd. x x/20-8.
Secy.

Legal U.O.No.9760/48-1,dated 20-8-1948.

Firka Development Deptt.(V)

Please see the Legal Deptt. note on pp.3-4 above. They state that the difficulty pointed out by the Pdt. H.R.E. Board, viz., that there is the possibility of the Govt. declaring an institution to be a temple within the meaning of section 2(2) of the M.T.E.A. Act and the H.R.E. Board declaring the same institution as not being a temple under section9(12) of the H.R.E. Act seems to be real and is more or less inevitable so long as the authorities empowered to decide the matters arising out of the two Acts which are practically the same are different. They suggest that the difficulty can be satisfactorily met if the jurisdiction to decide the matter under the two Acts is vested in the same authority and thetwo Acts are amended to the effect that the decision of that authority under one Act has ~~the effect of a decision of that authority under the other Act has~~ the effect of a decision of that authority under the other Act also. It is submitted that as already stated, before the Govt give a decision under the M.T.E.A. Act as

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as to whether a particular temple falls within the scope of the Act or not, the remarks of the Pdt. H.R.E. Board in the matter are obtained and taken into account. It is not therefore likely that there will be many cases in which conflicting decisions in respect of a particular temple are given by the Govt. and the H.R.E. Board, which also will take into account the views of the Pdt. in the matter. Such cases will become still more uncommon when the definition of 'temple' in the two Acts is made identical for which proposals are under consideration spearately. In the M.T.E.A. Act, the power of decision is vested in Govt. It would seem that this power has been specifically taken by Govt. in as much as it cannot be said that when the M.T.E.A. Act was framed, Govtt. were not aware of a corresponding provision in the H.R.E.Act under which the power of decision is vested with the Board. It is quite probable that the power was vested in Govt. knowing that in the H.R.E. Act such a power is vested only in the Board. There seems to be no strong case for altering the position now. As pointed out already, conflicting decisions may be very rare but even if in a few cases such decisions are given by Govt. and the H.R.E. Board, they need not embarass the latter since the remarks of the President on which Govt. base their decision cannot be taken or construed as the views of the Board under section 84 (1) of the H.R.E. Act. In the circumstances it is for consideration whether the suggestion made by Legal should be pursued or whether it will be enough if the Pdt. H.R.E. Board is informed as proposed in para (4) on p.2. ante.

The case may be circulated to H.M.(Agrl) H.Pr. for orders.

When the Madras Hindu Religious Endowments Bill, 1947 which is now under examination becomes an Act, the H.R.E. Act of 1926 will be repealed and the corresponding Clause 43 (corresponding to Section 84 in the present Act) will come into operation. Under clause 43 (a), the Dy.Commissioner is the authority to decide whether an institution is a religious institution or not, and the Commissioner is the authority to hear appeals from the decision of the Dy.Commissioner. Naturally, the Govt. will consult the Commissioner in all cases of dispute and there will be hardly any necessity for variation of opinion between the Commissioner and the Govt. after the proposed amendment by which the definition of 'templ in Section 2 (2) of the Madras Temply Entry Authorization Act is brought in line with the definition of 'temple' in Section 9 (12) of the H.R.E. Act, 1926. The Pdt. may therefore be informed as in para 4 on p.2 ante.

Sd. x x/16-9-48.

When Act V of 1947 is amended so as to make the definition of temple therein identical with the definition in Act II of 1927, there would be very little scope for difference between the Govt. and the President.

When the President is consulted, as he is being consulted at present under Act V of 1947 it is open to him to refer to a previous decision of the Board under Section 84 of Act II of 1927 or to the initiation of proceedings for such a decision.

The President may, therefore, be informed as in para 4 on p.2 ante.

Sd. x x/1-10-48.

I agree. Even if any amendment is necessary we can do so and avoid even the apparent anomaly in considering the Bill which is under examination.

Sd. x x/10-12.

for H.PR. Sd. x x H.M.(Agrl)

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Please see the orders in circulation above. No amendment seem necessary in this case. A draft memo is submitted.

2. The apparent anomaly in the case relates to the following points.

(1) In the M.T.E.A. Act, the authority to decide the issue is the Govt. while under the H.R.E. Act, the authority is the Board.

(2) In the M.T.E.A. Act, appeal against the Govt.'s decision is to the competent Civil Court only while in the H.R.E. Act, there is a first appeal to the Dt.Courts and a second appeal to the High Court

The question of avoiding the above anomaly, may, it is submitted be taken up separately after the H.R.E. Bill which is separately under consider tion becomes law for the reasonx that the H.R.E. Bill makes changes in the matter of appeal relating to the decision regarding whether an institution is a religious are or not. Otherwise, amendments to both the Acts will have to be made now and again after the H.R.E.Bill becomes an Act. Relevant extracts of this case will be taken and started as a separate file to be dealt with in connection with the work connected with the H.R.E. Bill.

Sd. x x15-12-48.

/Issued as Memo No. 3312 V.2/48, F.D,dated 15-12-1948.

Relevant extracts have been taken from this file for separate action. The papers may now be

Order Ms 969 F.D., dated 27-12-1947.

Recorded.

Sd x x/21/12-48. Sd. x /23-12-48.
S.for information.

Abstract:
The Madras Temple Entry Authorisation Act, 1947 - Exemption from the operation of the Act - Temples belonging to a section of the Hindu Community - Certain difficulties - clarification - Papers - Recorded.

/True copy/

Office Assistant, 26/3
Madras Record Office.

PSR. 7-1-54.

23/7/54